



Recommendation 75-8

Internal Revenue Service Procedures: Tax Return Confidentiality

(Adopted December 11-12, 1975)

(a) *Purpose and Scope of Application of Recommendations.* (1) Under existing law, tax returns are disclosed by the Internal Revenue Service for many purposes to many governmental agencies outside the Internal Revenue Service. The purpose of these recommendations is substantially to narrow the authority of the Service to disclose to other governmental agencies tax returns pertaining to the tax liability of individuals and decedents, including principally individual income tax returns (Forms 1040 and 1040A), estate tax returns (Form 706), gift tax returns (Form 709), and income tax returns filed on behalf of estates or trusts (Form 1041). Tax returns of business entities such as partnerships and corporations, even though they may have bearing on the tax liability of individuals, are outside the scope of these recommendations. The omission of such other tax returns from the scope of application of these recommendations is intended to reflect neither approval nor disapproval of existing law or of the disclosure practices of the Internal Revenue Service thereunder, with respect to such other tax returns. But Congress, in addressing the subject of tax return confidentiality should make provision to govern the confidentiality and conditions of disclosure of all categories of tax returns, including categories that are outside the scope of these recommendations.

(2) As used in these recommendations, the term "tax return" means (i) the return itself together with any schedule, list, and other written statement filed by or on behalf of the taxpayer with the Internal Revenue Service which is designed to be supplemental to or become a part of the return, and (ii) other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to the items included in paragraph (a) (2) (i) of this section.¹

(b) *General.* Legislation should be enacted which would permit the disclosure of tax returns by the Internal Revenue Service only as authorized by express statute designating the persons to whom and the purposes for which disclosure may be made, the procedures

¹ This definition is taken from Treasury Regulation § 301.6103(a)-1(3)(i). In considering any legislation in this area, Congress should consider the adequacy of this definition, since some technical problems may exist under the present regulation.



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governing such disclosure, and limitations on use or redisclosure that shall govern such disclosure.

(c) *Availability of Tax Returns to Executive Departments and Agencies.* (1) Legislation should be enacted which would permit the disclosure by the Internal Revenue Service of tax returns to any Executive department or agency of the Federal government in the following circumstances:

(i) To any office of the Treasury Department for use that is necessary to its exercise of responsibility for the administration of the tax laws, the formulation of tax policy, or the preparation of economic analyses.

(ii) To a United States Attorney, or to an attorney of the Department of Justice, for use in preparing for and conducting civil or criminal litigation that is related to administration of the tax laws, provided, that any such disclosure, shall be limited to (A) the tax return of the taxpayer who is a party to the litigation, (B) the tax return of an alleged co-conspirator of such party, and (C) the tax return of any other taxpayer which contains information that is pertinent to an issue on the litigation, and provided further, that when any such disclosure is to be made in response to a request initiated by any such attorney, the request shall be in writing and state with specificity the reasons for seeking the tax return.

(iii) To the Bureau of the Census and to the Bureau of Economic Analysis of the Department of Commerce for use that is necessary to their respective statistical collection and publication responsibilities.

(iv) To the Social Security Administration for use that is necessary to its responsibility for administering the Social Security Act.

(v) To the Department of Labor and to the Pension Benefit Guaranty Corporation for use that is necessary to their respective responsibilities for administering the Employee Retirement Income Security Act.

Particularly, the Internal Revenue Service should not be permitted to disclose tax return information to any Executive department or agency of the Federal government for use in any way relating to an individual's service as a juror. [The Conference defers consideration of whether, and under what circumstances, tax returns should be disclosed to Executive



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departments or agencies of the Federal government for use in litigation or investigations not related to the administration of the tax laws.]

(2) Any disclosure in a form that allows identification of the taxpayer should be made only if the agency or department to which disclosure is made follows procedures based on legally enforceable regulations no less restrictive than those of the Internal Revenue Service which are designed to assure that the tax return will not be used or redisclosed for any purpose other than that for which such disclosure is made.

(d) Availability of Tax Returns to the Executive Office of the President. (1) Legislation should be enacted which would permit the disclosure of tax returns by the Internal Revenue Service to the Executive Office of the President, only in accordance with the following limitations:

(i) The President shall personally sign a written request for such disclosure which (A) specifies the taxpayer's tax return to be disclosed; (B) designates by name a responsible individual to whom disclosure is to be made; (C) states with specificity the reasons for seeking the tax return and the uses to which it will be put; and (D) states that the tax return requested will not be reproduced and will not be used or redisclosed for any use other than that for which disclosure is requested.

(ii) The requested tax return shall be furnished by the Internal Revenue Service only in written form and only to the President or to an individual designated in the request.

(iii) The written material furnished by the Internal Revenue Service shall be returned to the Service after the use for which it was requested has been completed.

(2) The Internal Revenue Service should maintain permanent records of all disclosures of tax returns to the Executive Office of the President, including copies of Presidential requests, the dates and reasons therefor, the individuals to whom disclosure is made, and the dates when materials furnished are returned to the Service. Based on such records, the Internal Revenue Service should prepare and submit an annual report to the committees of the Congress which are charged with responsibility for oversight of the administrative procedures of the Service, of the names of all taxpayers about whom information was disclosed, the reasons for which each disclosure was requested, and the names of all individuals to whom such disclosures were made.



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(e) *Availability of Tax Returns to Committees of Congress.* The existing statutory authority (Section 6103(d) of the Internal Revenue Code) for the Senate Committee on Finance, and the Joint Committee on Internal Revenue Taxation should be continued. Disclosure of tax returns by the Internal Revenue Service to any other committee of the House or Senate, or joint committee of the Congress, should only be in accordance with specific authorization for such disclosure by a resolution of the House or Senate or, in the case of a joint committee, by a concurrent resolution.

(f) *Availability of Tax Returns to States.* (1) Legislation should be enacted which would amend Section 6103(b) of the Internal Revenue Code by providing the following additional limitations on the right of any State official, body, or commission to inspect tax returns:

(i) The State shall have enacted a statute, which the Commissioner of Internal Revenue has determined to be substantially similar to paragraph (2) of Section 7213 of the Internal Revenue Code, making it a crime for any officer, employee, or agent of the State, or of any political subdivision thereof, to disclose any information acquired by him as a consequence of a disclosure made by the Internal Revenue Service pursuant to Section 6103(b) of the Internal Revenue Code.

(ii) The State shall have entered into, and shall fully comply with, an agreement with the Internal Revenue Service by which the State is obligated to adopt legally enforceable regulations and procedures to safeguard the confidentiality of tax returns which are determined by the Internal Revenue Service to provide satisfactory assurance that (A) information disclosed by the Service to the State, pursuant to Section 6103(b) of the Internal Revenue Code, and (B) information, submitted by a taxpayer to the State or local tax authorities, which is the same as or substantially similar to that compiled for submission with the taxpayer's federal income tax return, will be used or disclosed only within the limitations therein provided.

(2) The Internal Revenue Service should adopt regulations which shall contain provisions to accomplish the following:

(i) Establish procedures whereby (A) the Service will make the determination that a State has enacted a statute that is substantially similar to paragraph (2) of Section 7213 of the Internal Revenue Code, and (B) the Service will monitor the State's enforcement of such statute;



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(ii) Establish criteria that will be applied by the Service in making determinations regarding the sufficiency of State regulations and procedures designed to limit use and redisclosure of information to be disclosed pursuant to Section 6103(b) of the Internal Revenue Code;

(iii) Establish criteria that will be applied by the Service in acting upon requests for disclosure of information pursuant to Section 6103(b) of the Internal Revenue Code; and

(iv) Establish procedures whereby the Service will audit and enforce the performance by the States of their obligations provided in agreements entered into as a condition of obtaining disclosure of information pursuant to Section 6103(b) of the Internal Revenue Code, including a procedure for suspending disclosure of information to a State under Section 6103(b) whenever the Service determines that the State has failed to perform any of its obligations provided in such agreement.

(g) *Requisition of Tax Returns by Service Personnel.* The Internal Revenue Service should strengthen its procedures designed to eliminate unnecessary inspection of tax returns by Service employees. Such procedures should provide for (1) periodic monitoring by Service management of the requisitioning of tax returns by Service employees, (2) preparation and maintenance of statistical records designed to reveal patterns of frequency in, and of reasons for, the requisitioning of tax returns by Service employees, and (3) preservation of the documents employed by Service employees to requisition tax returns by incorporating each such document in the permanent file of the return requisitioned thereby.

(h) *Notice to the Public About Tax Return Disclosures.* The Internal Revenue Service should inform each taxpayer, by means of a concise statement in the tax return or other appropriate place, of the disclosure, for uses unrelated to the administration of Federal tax laws, that may be made of information supplied by the taxpayer in the return. Such statement should include reference to a public document, which should be prepared and disseminated by the Service, which identifies the governmental agencies and other persons to which disclosures of tax returns are made and the purposes for such disclosures, and which fully describes the procedures followed by the Service with respect to the disclosure of tax returns.²

² This recommendation might be implemented by amplification of the Privacy Act notification provided with the 1975 income tax returns.



Citations:

41 FR 3985 (January 27, 1976)

___ FR _____ (2012)

4 ACUS 39

Note: This recommendation was substantially enacted into law in the Tax Reform Act of 1976, Public Law 94-455, § 1202.

Amendment to Recommendation 75-8

Internal Revenue Service Procedures: Tax Return Confidentiality

(Adopted June 3-4, 1976)

Paragraph (b) of Recommendation 75-8 is amended to read as follows:

(b) *General.* (1) Legislation should be enacted which would permit the disclosure of tax returns by the Internal Revenue Service only as authorized by express statute designating the persons to whom and the purposes for which disclosure, and limitations on use or redisclosure that shall govern such disclosure.

(2) Legislation should be enacted which would provide that tax returns pertaining to the tax liability of individuals and decedents are confidential and, except as specifically authorized by statute, shall not be disclosed by the Internal Revenue Service to the general public, or any individual member thereof, either at the initiative of the Internal Revenue Service or in response to a request for disclosure made to the Service by any member of the general public, provided that such prohibition shall not prevent disclosure by the Service of any tax return of an individual or a decedent upon a request duly made by such individual or his authorized representative or by the authorized representative of such decedent.

(3) Legislation should be enacted providing, as a general limitation on all tax return disclosure authority conferred on the Internal Revenue Service, that in making any authorized



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disclosure of a tax return to any person other than the taxpayer to whom the return pertains, the Service shall disclose no more information than is necessary to effectuate the purpose for which such disclosure is authorized and providing further that the Service shall establish administrative procedures designed to assure that every particular disclosure is made in strict accordance with the authority therefor and with such general limitation.

Citations:

41 FR 29655 (July 19, 1976)

___ FR _____ (2012)

4 ACUS 43